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In the Supreme Court of the United States

GRAHAM COUNTY SOIL & WATER CONSERVATION DISTRICT, *et al.*,

Petitioner,

v.

UNITED STATES, ex rel. KAREN T. WILSON,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF *AMICI CURIAE* OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION AND THE TAXPAYERS AGAINST FRAUD EDUCATION FUND IN SUPPORT OF RESPONDENT

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Brief of *Amici Curiae* National Employment Lawyers Association and Taxpayers Against Fraud Education Fund in Support of Respondent

The National Employment Lawyers Association ("NELA") and Taxpayers Against Fraud Education Fund ("TAFEF") files this Brief as *Amici Curiae* in support of Respondent. NELA and TAFEF request *affirmance* of the Fourth Circuit's decision applying the six-year limitations period in 31 U.S.C. § 3730(b)(1) of the False Claims Act to employment retaliation claims arising under 31 U.S.C. § 3730(h) of the False Claims Act.

INTEREST OF *AMICI CURIAE*

NELA and TAFEF file this *amici curiae* brief with the consent of all parties.[1] NELA is the only professional membership organization in the country comprised of lawyers who represent employees in labor, employment and civil rights disputes. NELA and its 67 state and local affiliates have a membership of over 3,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. NELA strives to protect the rights of its members' clients and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace. NELA advocates for employee rights and workplace fairness while promoting the highest standards of professionalism, ethics and judicial integrity.

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[1] The consents of the parties have been filed with the Clerk of the Court. In compliance with Rule 37.6 of this Court, *amici curiae* National Employment Lawyers Association (NELA) and Taxpayers Against Fraud Education Fund (TAFEF) state that no counsel for either party authored any portion of this brief. No persons other than the *amici curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

Taxpayers Against Fraud Education Fund ("TAFEF") is a nonprofit public interest organization dedicated to combating fraud against the federal government through the promotion of the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3729 *et seq.* and the support of whistleblowers who use the Act. The *qui tam* provisions of the Act permit a private relator to file suit on behalf of the United States alleging violations of the Act. In addition, the Act provides retaliation protection for the *qui tam* relator who brought the case. Typically, relators will file their retaliation claim along with the underlying False Claims Act claim, so as not to violate the public disclosure and seal provisions of the Act. TAFEF therefore has a strong interest in ensuring that the six-year statute of limitations provision is correctly applied to both claims - the retaliation claim and the False Claims Act claim - thus preventing premature actions under the Act.

NELA and TAFEF are familiar with the questions involved in this case and the scope of their presentation and believe there is a necessity for additional argument on these points. NELA and TAFEF feel that it would be helpful to the Court, and important to the public, to file this *amici curiae* brief in order to assist the Court in the resolution of this case. NELA and TAFEF have a profound and abiding interest in ensuring that the employment retaliation protections in the False Claims Act are appropriately interpreted and applied.

SUMMARY

The Fourth Circuit's decision ensures that there will be a uniform limitations period for all employee whistleblower retaliation claims under the False Claims Act. A statute of limitations that varies based upon (1) factual differences in the type of retaliation that occurred, (2) the type of employment (private or public), or (3) the state in which an action is brought (where the plaintiff whistleblower worked or where the fraud occurred), will impair the strong federal interests in consistent enforcement of a federal anti-fraud scheme, lead to inconsistent results, create a patchwork quilt of time limitations and facilitate forum-shopping in cases where time limits may have otherwise run or may have been extended. Finally, a short statute of limitations, like those common under closely analogous state statutes prohibiting employment or other whistleblower discrimination, will interfere with the False Claims Act's *qui tam* provisions that require a filing under seal and frequently spawn undercover or other criminal investigations. Absent meaningful False Claims Act employment protections with an adequate and certain time period for bringing claims, many employees will fear to "blow the whistle" on fraud, will be discouraged from notifying employers of suspected wrongdoing and will not come forward to assist the federal government in exposing fraud or will be unwilling witnesses.

ARGUMENT

I. THE FOURTH CIRCUIT CORRECTLY DECIDED THAT THE RESPONDENT EMPLOYEE HAD SIX YEARS WITHIN WHICH TO BRING AN ACTION FOR "PROTECTED ACTIVITY" UNDER THE FALSE CLAIMS ACT'S RETALIATION PROVISIONS IN 31 U.S.C. § 3730(H) WHEN THE FALSE CLAIMS ACT STATUTE PROVIDES FOR A SIX-YEAR STATUTE OF LIMITATIONS FOR "ALL CLAIMS BROUGHT UNDER THIS SECTION."

In 1986, Congress enacted employee retaliation protections as part of its comprehensive overhauling of the False Claims Act, 31 U.S.C. § 3729 *et seq.* The so-called "Lincoln Law," a Civil War-era statute, now forms a vital part of the federal enforcement scheme for identifying and

prosecuting financial fraud schemes perpetrated on the United States.[2] The 1986 Amendments reinvigorated the law by, *inter alia*, increasing the ability of private persons to bring actions "for themselves and the United States as *qui tam* relators, clarifying the burden of proof, increasing penalties and amending the damages provisions, and otherwise making the Act a more effective mechanism to ferret out schemes to defraud the Government and to recover funds[3]."

An important element in the overall Congressional strategy to incentivize insiders, frequently employees of government contractors, were new provisions codified at 31 U.S.C. § 3730(h). Congress intended vigorous anti-retaliation protections for employee whistleblowers who investigated or otherwise disclosed illegal schemes that violate the False Claims Act. Congress enacted the law after whistleblowers testified about the need to bar employment retaliation in order to encourage reporting of government contracting fraud.[4]

The Section 3730(h) whistleblower protection states:

> Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer

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[2] *See Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 768 n. 1 (2000); *Hutchens v. Wilentz, Goldman & Spitzer*, 253 F.3d 176 (3d Cir. 2001).

[3] Sylvia, Claire M., "The False Claims Act: Fraud Against the Government" § 2:9 (Thomson-West 2004).

[4] McKnight, H. Vincent, *et al.*, "Causes of Action by Employee for Retaliation and Reprisal Pursuant to the False Claims Act, 31 U.S.C.A. § 3730(H)," 22 *Causes of Action 2d.* 217, § *2 at* 226 (West 2003).

> because of lawful acts done by the employee on behalf of his employer or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole.

The statute provides reinstatement with seniority, double back pay, interest, special damages sustained as a result of discriminatory treatment, and attorneys fees and costs.[5] Federal jurisdiction exists for whistleblower claims under the False Claims Act, 31 U.S.C. §§3730(b) and 3732(a)-(b), in addition to general federal question jurisdiction. 28 U.S.C. §1331.

To prove a Section 3730(h) retaliatory discharge claim, the whistleblower must show that she or he engaged in conduct protected by the False Claims Act.[6] The courts also

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[5] 31 U.S.C. § 3730(h); *Hammond v. Northland Counseling Center, Inc.*, 218 F.3d 886, 891-894 (8th Cir. 2000); *United States ex rel. Shaw v. AAA Engineering & Drafting, Inc.*, 213 F.3d 538, 544-545 (8th Cir. 2000); *Neal v. Honeywell, Inc.*, 191 F.3d 827, 831-834 (7th Cir. 1999) (other history omitted); *Eberhardt v. Integrated Designs & Construction, Inc.*, 167 F.3d 861, 872 (4th Cir. 1998) (interest should be provided).

[6] *Hutchens, supra*; *United States ex rel. McKenzie v. BellSouth Telecommunications, Inc.*,123 F.3d 935, 943-944 (6th Cir. 1997) *cert. denied* 522 U.S. 1077 (1998), *after remand*, 219 F.3d 508, 513 (6th Cir. 2000); *United States ex rel. Luckey v. Baxter Healthcare Corp.*, 183 F.3d 730, 733 (7th Cir. 1999); *United States ex rel. Yesudian v. Howard University*, 153 F.3d 731, 736 (D.C. Cir. 1998); *Zahodnick v. International Business Machines Corp.*, 135 F.3d 91 (4th Cir. 1997); *Hopper v. Anton*, 91 F.3d 1261, 1269 (9th Cir. 1996); *United States ex rel. Ramseyer v. Century Healthcare Corp.*, 90 F.3d 1514, 1522 (10th Cir. 1996); *Neal*, 33

(continued...)

require a showing that the defendant has some notice of the protected conduct that the whistleblower was either taking action in furtherance of a *qui tam* action or assisting in an investigation or actions brought by the Government.[7] Finally, the whistleblower must show that the termination was in retaliation for the protected activities.[8]

The protection against retaliation has been extended by most courts to whistleblowers whose allegations could legitimately support a False Claims Act case, even though no case is ever filed by a relator, co-worker, or the Department of Justice.[9] Courts have also held that Section 3730(h) does not require that the plaintiff even have been aware of the False Claims Act at the time he or she engaged in the relevant activity.[10]

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[6] (...continued)
F.3d at 864; *Robertson v. Bell Helicopter Textron, Inc.*, 32 F.3d 948, 951 (5th Cir. 1994), *cert. denied*, 513 U.S. 1154 (1995) (citing S. Rep. No. 345, 99th Cong., 2d Sess. 35 (1986), *reprinted in*, 1986 U.S.C.C.A.N. 5266, 5300).

[7] *Hutchens*, 253 F.3d at 186; *United States ex rel. McKenzie*, 123 F.3d at 943-944; *Eberhardt*, 167 F.3d at 868; *United States ex rel. Yesudian*, 153 F.3d at 744; *Childree v. UAP/GA AG Chem, Inc.*, 92 F.3d 1140, 1146 (11th Cir. 1996); *Hopper*, 91 F.3d at 1269-70; *United States ex rel. Ramseyer*, 90 F.3d at 1522; *Robertson*, 32 F.3d at 951; *Neal*, 33 F.3d at 864.

[8] *Wilkins v. St. Louis Housing Authority*, 314 F. 3d 927, 932-933 (8th Cir. 2002); *Hutchens*, 253 F.3d at 186; *United States ex rel. Yesudian*, 153 F.3d at 736; *Hopper*, 91 F.3d at 1269-70; *United States ex rel. Ramseyer*, 90 F.3d at 1522.

[9] *United States ex rel. Yesudian*, 153 F.3d at 736, 739; *Childree*, 92 F.3d at 1146; *United States ex rel. Ramseyer*, 90 F.3d at 1522; *Neal*, 33 F.3d at 864-865.

[10] *United States ex rel. Yesudian*, 153 F.3d at 741.

The False Claims Act's only limitations provision is found in 31 U.S.C. § 3731(b) and applies to all civil actions brought under 31 U.S.C. § 3730. The provision states:

> (b) A civil action under section 3730 may not be brought -
>
> (1) more than 6 years after the date on which the violation of section 3729 is committed, or
>
> (2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

The 31 U.S.C. § 3730 provision, referred to in 31 U.S.C. § 3731(b) above, includes three types of civil actions:

1) a cause of action brought by the United States under 31 U.S.C. § 3730(a);

2) a *qui tam* action under 31 U.S.C. § 3730(b) brought by a whistleblowing relator on behalf of the relator and the United States; and

3) an employment retaliation claim action under 31 U.S.C. § 3730(h) filed by an individual employee.

Therefore, an action under 31 U.S.C. § 3730, which necessarily includes an action under 31 U.S.C. § 3730(h), is to be brought within six years of the date on which the underlying False Claims Act violation occurred.[11] Indeed,

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[11] For purposes of this brief, *amici* will refer to the basic six-year statute, not to the ten-year statute of repose that applies "when facts material" were not "reasonably. . .known. . ." 31
(continued...)

the legislative history explains that the False Claims Act whistleblower provision protects those who report fraud "in connection with false claims prosecutions." 132 CONG. REC. 22336.

Petitioner argues that, despite the Act's language, the six-year limitations period applies to every 31 U.S.C. § 3730 cause of action **except** to employment retaliation claims arising under 31 U.S.C. § 3730(h). Petitioner's argument, however, was rejected in the seminal opinion on 31 U.S.C. § 3730(h) claims, *Neal v. Honeywell, Inc.*, 33 F.3d 860, 865-866 (7th Cir. 1994) (other history omitted):

> How absurd!, Honeywell rejoins, to read the statute so that the time to file suit may expire before the retaliation occurs. If a firm submits a false claim early in 1991, an employee discovers the falsity in 1995, and the employer fires the whistleblower late in 1997, a suit under § 3730(h) would be untimely. Ever-solicitous of its ex-employees' right to sue it, Honeywell contends that § 3731(b)(1) cannot sensibly be applied to § 3730(h), and that we should therefore turn to state law--which, Honeywell believes, supplies a term of five years from the retaliation. Neal waited too long and must lose, Honeywell submits. Unlike Honeywell, however, we find no absurdity in the statute. Statutes of repose, increasingly common in tort cases, have the potential to block litigation before the tort occurs. Suppose the law bars suits filed more than ten years after the product's delivery. Then a person injured by a defect ten years and a day after sale lacks a remedy. The statutes of repose in federal securities laws may expire before a person discovers the fraud. *See*

[11] (...continued)
U.S.C. § 3731(b)(2).

> *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991). If § 3731(b)(1) is another exhibit in this list, that would not condemn it as absurd. It would show only that Congress has opted for simplicity of administration. (It is easier to determine the date of a false claim than to pin down the time of retaliatory acts; the claim is a document, but arguments about retaliation depend on oral exchanges and are subject to failure of memory as well as the risk of prevarication.) In most cases, of which this is an example, the false claims, the reports, and the retaliation will occur close in time, so starting the period of limitations with the false claim rather than the retaliation will leave employees ample time to protect their rights. Claims of employment discrimination under labor and civil rights laws must be made in less than a year. *See, e.g., DelCostello v. Teamsters*, 462 U.S. 151(1983); *Smith v. Chicago*, 769 F.2d 408 (7th Cir. 1985); 42 U.S.C. § 2000e-5(e). Whistleblowers are likely to have much more than that, as Neal did. It is possible, moreover, that equitable tolling or estoppel would apply to § 3731(b)(1) if the firm patiently waited until six years from the false claim and then sacked the troublesome employee. *Cf. Cada v. Baxter Healthcare Corp.*, 920 F.2d 446 (7th Cir. 1990); *Davidson v. Western Illinois University*, 920 F.2d 441 (7th Cir. 1990).[12]

Petitioner's argument that the statute's plain language should be ignored is in derogation of the nearly unanimous rulings of the appellate courts, distorts the applicable legislative history of the 1986 False Claims Act Amend-

[12] *Neal*, 33 F.3d at 865-866.

ments and undermines the policy concerns that underlie the Act. Petitioner's interpretation, which attempts to remove 31 U.S.C. § 3730(h) from 31 U.S.C. § 3730, prejudices the individual employees and the Government by discouraging whistleblowers from coming forward to disclose fraud. Because the Fourth Circuit's decision respects the False Claims Act's language, honors the applicable legislative intent, and correctly protects whistleblowers from reprisals, the decision should be affirmed.

A. The False Claims Act's Express Statutory Language Supplies a Six-Year Limitations Period.

Petitioner's suggested reading of 31 U.S.C. § 3731(b)(1) excludes retaliation claims from the ambit of the only limitations provision in the False Claims Act, rewriting the language to state that "a civil action under Section 3730[(a) or (b)] may not be brought more than six years after the date on which the violation of Section 3729 is committed" and that actions under 31 U.S.C. § 3730(h) may not be brought more than 90 days to six years from when the allegedly discriminatory employment action occurred depending on the state law where the relator is or was employed.

First, contrary to Petitioner's argument that this Court should disregard the statutory limitations period and instead adopt an ever-changing landscape of state limitations period, Congress and this Court do not cavalierly adopt state statutory limitations periods for federal laws. As this Court previously observed: "The short answer is that Congress did not write the statute that way." *United States v. Naftalin*, 441 U.S. 768, 773 (1979). As stated in *United States v. Ron Pair Enters.*, 489 U.S. 235, 240-243 (1989):

> Rather, as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute. The task of resolving the dispute over the meaning of § 506(b) begins where all such inquiries must begin: with the language of the statute itself. *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985). In this case it is also where the inquiry should end, for where, as here, the statute's language is plain, "the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). The language before us expresses Congress' intent -- that postpetition interest be available -- with sufficient precision so that reference to legislative history and to pre-Code practice is hardly necessary.

This Court further cautioned in a case involving the federal securities laws:

> . . .under a statute that also contains an express cause of action with its own time limitation, a court should look first to the statute of origin to ascertain the proper limitations period. We can imagine no clearer indication of how Congress would have balanced the policy considerations implicit in any limitations provision than the balance struck by the same Congress in limiting similar and related protections. *See DelCostello*, 462 U.S. at 171; *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56, 69-70, (1981) (opinion concurring in judgment). When the statute of origin contains comparable express remedial provisions, the inquiry usually should be at an end. Only where no analogous counterpart is available should a court then proceed to apply

state-borrowing principles.[13]

"[W]hen the statute's language is plain, the sole function of the courts-at least where the disposition required by the text is not absurd-is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). It would be absurd here to require the Court to set aside the language in a Congressionally-enacted statute in favor of a potpourri of inconsistent and, perhaps wholly inappropriate, state limitations. As this Court stated several decades ago:

> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. *United States v. American Trucking Assns., Inc.*, 310 U.S. 534, 543 (1940). *See Caminetti v. United States*, 242 U.S. 470, 490 (1917). Nevertheless, in rare cases the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters, and those intentions must be controlling. We have reserved "some 'scope for adopting a restricted rather than a literal or usual meaning of its words where acceptance of that meaning . . . would thwart the obvious purpose of the statute.'" *Commissioner v. Brown*, 380 U.S. 563, 571 (1965) (quoting *Helvering v. Hammel*, 311 U.S. 504, 510-511 (1941)). This, however, is not the exceptional case.[14]

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[13] *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 356 (1991) (other citations omitted).

[14] *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

Every court of appeals decision, except for the Ninth Circuit's *Lujan* decision, *infra*, successfully applied the plain text of the False Claims Act statute of limitations provision to 31 U.S.C. § 3730(h) without producing an "absurd disposition." The issue before the Supreme Court can be decided solely on the plain text of the Act.

Congress tied the retaliation claim to a date six years after the last false claim was submitted by the defendant. This is not an absurd result, but merely an effort to establish ease of administering the statute, since the "claim" is a document and not subject to faulty or created memory. In addition, Petitioner's interpretation of 31 U.S.C. § 3730(h), which explicitly protects an employee acting "in furtherance" of a 31 U.S.C. § 3729 action, attempts to isolate the retaliation provision from the underlying 31 U.S.C. § 3729 False Claims Act violation provision. However, as the Fourth Circuit noted, no action of any type under 31 U.S.C. § 3730, including one under 31 U.S.C. § 3730(h), can proceed unless there has been an alleged violation of 31 U.S.C. § 3729. Thus, the language of 31 U.S.C. § 3729 is the common thread linking both provisions - 31 U.S.C. § 3730(h) and 31 U.S.C. § 3731(b)(1) - and undermines Petitioner's argument that 31 U.S.C. § 3729 has no bearing upon retaliatory discharge actions.

B. The Limitations Period Contained in 31 U.S.C. § 3731(b)(1) Applies to Employment Discrimination Actions Under 31 U.S.C. § 3730(h).

The Fourth Circuit's decision examined carefully the Seventh Circuit's decision in *Neal v. Honeywell, supra*. In *Neal*, the Seventh Circuit held that a suit under 31 U.S.C. § 3730(h) is an action under 31 U.S.C. § 3730. Although statutory language may create a burden for employers, this is a matter to be resolved by the political process, not the judiciary. Congress wanted to make employees feel more secure in reporting misconduct.

The Fourth Circuit's decision below also found that the statutory framework of the False Claims Act shows that Congress intended retaliation claims to be tied to violations of 31 U.S.C. § 3729. Calling this a "trigger" mechanism, the Fourth Circuit pointed out that a retaliation action will not lie unless it is connected with an allegation of a violation of 31 U.S.C. § 3729. Rather than signaling Congressional intent to exclude retaliation claims from the six-year statute, it merely ties an employee retaliation claim to some colorable violation of the False Claims Act. If plaintiffs-whistleblowers were required to show a judicially substantiated violation of 31 U.S.C. § 3729 before suit could begin (as Petitioner argues) no action could ever be perfected.

C. The Appellate Courts Have Applied the Text of 31 U.S.C. § 3731(b)(1) to 31 U.S.C. § 3730(h)

Petitioner's portrayal of the Fourth Circuit's decision as "deepen[ing] an existing conflict among the circuit courts" seizes upon language in the Ninth Circuit's *Lujan* decision as proof that statutory ambiguity demands a review of the legislative history. *See United States ex rel. Lujan v. Hughes Aircraft Co.*, 162 F.3d 1027 (9th Cir. 1998) (holding that, in retaliation claims under Section 3730(h), the applicable statute of limitations is taken from the "most closely analogous state statute," not the False Claims Act's statute of limitations provision). However, every court outside the Ninth Circuit that has addressed this issue has applied the False Claims Act's limitations provision without finding any statutory ambiguity. *United States ex rel. Wilson v. Graham County Soil & Water Conservation District*, 367 F.3d 245 (4th Cir. 2004); *United States ex rel. Malloy v. Telephonics Corp.*, 68 Fed. Appx. 270 (3d Cir. 2003), *cert. denied*, 158 L. Ed. 2d 469 (2004); *Neal, supra*; *accord, Kowalski v. Alpha Kappa Alpha Sorority*, 993 F. Supp. 619, 620-2 (N.D. Ohio 1997); *Grand ex rel. U.S.*, 811 F. Supp. at 335-337; *Storey v. Patient First Corp.*, 207 F. Supp. 2d 431, 444 (E.D. Va. 2002); *United States ex rel. Mikes v. Strauss*, 889 F. Supp. 746, 753-754 (S.D.N.Y. 1995); *United States ex rel. Kent v. Aiello*, 836 F. Supp. 720, 723-724 (E.D. Cal. 1993); *United States ex rel. Cantekin v. University of Pittsburgh*, 1997 U.S. LEXIS 22868 (W.D. Pa., August 27, 1997).

II. A CONSISTENT AND ESTABLISHED STATUTE OF LIMITATIONS PERIOD IS CONSISTENT WITH CONGRESSIONAL INTENT AND THE POLICY OBJECTIVES OF THE FALSE CLAIMS ACT.

Even if the Court were to review the applicable legislative history, the Court would discover that the defendants' proposed statutory interpretation undermines the policy concerns behind the Act, especially the False Claims Act retaliation provision. In its 1986 amendments to the Act, Congress stressed "that few individuals will expose fraud if they fear their disclosures will lead to harassment, demotion, loss of employment or any other form of retaliation." *United States ex rel. McKenzie v. Bell South Telecommunications, Inc.*, 123 F.3d 935, 943-44 (6th Cir. 1997) (quoting S. Rep. No. 345, 99th Cong., 2d Sess. 35 (1986), *reprinted in* 1986 U.S. Code Cong. & Ad. News 5266, 5300). The statute, therefore, was enacted to assure a person who may wish to expose fraud that there will be protection from retaliation. *United States ex rel. Yesudian v. Howard University*, 153 F.3d 731, 736 (D.C. Cir. 1998).

Indeed, a relator's *qui tam* claim is often interrelated to his claim for retaliation. *See generally, United States, ex rel. Barbara Burch v. Piqua Engineering, Inc.*, 803 F. Supp. 115 (S.D. Ohio 1992) (noting that *qui tam* plaintiffs have standing because of the potential ramifications to their employment status by initiating an action under the False Claims Act). "Given the interrelatedness of the two

actions, Congress rationally concluded that the two actions should have identical statutes of limitation. Therefore, based upon the plain meaning of the statute, we conclude that [plaintiff] has filed a timely cause of action under 31 U.S.C. § 3730(h) for retaliation." *Grand ex rel. U.S.*, 811 F. Supp. at 336.

A. Consistency in Application of Statute of Limitations is Faithful to Congressional Intent.

Congress has demonstrated a clear preference for a consistent, easily administered statute of limitations. As this Court explained in *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004):

> The practice of borrowing state statutes of limitation also forced courts to address the "frequently present problem of a conflict of laws in determining which State statute [was] controlling, the law of the forum or that of the situs of the injury." S. Rep. No. 619, 84th Cong., 1st Sess., 4-6 (1955) (discussing problems caused by borrowing state statutes of limitations for antitrust claims). Even when courts were able to identify the appropriate state statute, limitation borrowing resulted in uncertainty for both plaintiffs and defendants, as a plaintiff alleging a federal claim in State A would find herself barred by the local statute of limitations while a plaintiff raising precisely the same claim in State B would be permitted to proceed. *Ibid.*

By short-circuiting the False Claims Act's statute of limitations provision, Petitioner's recommended alternative of the "most closely analogous state limitations period" creates a disincentive for relators to file suit, particularly in states with limitation periods as short as 90 days. In addition, the uncertainty inherent in choice-of-law issues

and in the process of identifying which of several potentially applicable statutes is "most analogous" would further undermine the protection Congress intended in enacting 31 U.S.C. § 3730(h), by creating a difficult maze of state employment law to navigate, simply in order to determine whether an individual could assert retaliation protections for reporting or investigating financial and contracting fraud violations by a federal contractor or grantee.

B. Consistency in Section 3730 (h) is Part of an Overall Legislative Scheme.

The protections under 31 U.S.C. § 3730(h) are central to a coherent fraud enforcement scheme. Although a handful of *qui tam* relators have achieved substantial financial success as a result of their whistleblowing activities, most individuals involved in assisting the United States in False Claims Act actions will not be so fortunate–most will not even be *qui tam* relators. Thus, the Government needs to be able to point to consistent statutory employment protections for witnesses and others who cooperate and assist them in their investigative efforts. Government agents investigating False Claims Act violations should not be expected to become experts in the nuances of state employment and whistleblower law simply in order to assure a witness or other person that they have meaningful job protections if they assist the United States. The consequences of a cooperating witness being misadvised, and then losing the anti-retaliation protections, could lead to the unintended and unfortunate result of a withdrawal of cooperation.

Even as to *qui tam* relators, the employment protections afforded under the False Claims Act may provide far more important relief than the prospect of future monetary damages. The False Claims Act is fraught with procedural and practical obstacles that can diminish a *qui tam* rela-

tor's recovery, even though the claims asserted under 31 U.S.C. § 3729 are meritorious and liability against the defendant is established.[15] Relators have no assurance of a substantial recovery, but the provisions of 31 U.S.C. § 3730(h) were intended to assure that no matter the outcome of the *qui tam* claims, the relators should remain employed, their mortgages paid, and their families fed during the litigation.

The risks for the whistleblower, in cooperating with the United States or in filing a *qui tam* action, cannot be understated. As a result of the 1986 Congressional amendments to the False Claims Act, *qui tam* actions are subject to several statutory bars, most of them termed jurisdictional, that can block otherwise meritorious claims from being pursued by a *qui tam* whistleblower.

The 1986 amendments to the False Claims Act were intended to encourage private enforcement suits by legitimate whistleblowers while barring suits by opportunistic *qui tam* plaintiffs who base their claims on matters that were previously the subject of public government investigations or were otherwise in the media. The primary bar is a "public disclosure" jurisdictional bar, providing that the courts may not entertain jurisdiction over any *qui tam* claims that were "publicly disclosed[16]." Most

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[15] *See* Lugbill, A., Section 2.85, False Claims Act *Qui Tam* Suits and False Claims Act Employee Whistleblower Protections, *"Litigating Wrongful Discharge Claims,"* (West 2003).

[16] *Hughes Aircraft Co. v. United States*, 520 U.S. 939, 950-1 (1997) (jurisdictional statute); *United States ex rel. Feingold v. Adminastar Federal, Inc.*, 324 F.3d 492 (7th Cir. 2003)(provision is labeled jurisdictional, but is actually substantive); *See generally, United States ex rel. Stone v. Rockwell International Corp.*, 282 F.3d 787 (10th Cir. 2002); *United States ex rel. Minnesota* (continued...)

courts interpret the Act's jurisdictional bars as permitting the Department of Justice, but not the relator, to pursue the claims.[17] "Where the *qui tam* suit is based upon 'allegations or transactions' which already have been 'publicly disclosed'". . . "in a criminal, civil, or administrative hearing in a congressional, administrative, or Government Accounting Office report, hearing, audit or investigation or from the news media," only an "original source" can bring a *qui tam* action.[18] These "public disclosure" provisions bar *qui tam* cases brought by persons other than an "original source." An "original source" is an individual who has "direct and independent knowledge of the information

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[16] (...continued)
Association of Nurse Anesthetists v. Allina Health Systems Corp., 276 F.3d 1032, 1040-43 (8th Cir.), *cert. denied*, __ U.S. __, 154 L. Ed. 2d 252, 123 S. Ct. 345 (2002); *United States ex rel. Dhawan v. New York Medical College*, 252 F.3d 118, 121-122 (2d Cir. 2001); *United States ex rel. Hafter v. Spectrum Emergency Care, Inc.*, 190 F.3d 1156, 1163 (10th Cir. 1996); *United States ex rel. Mistick PBT v. Housing Authority*, 186 F.3d 376 (3d Cir. 1999), cert. denied, 529 U.S. 1018 (2000); *United States v. Bank of Farmington*, 166 F.3d 853, 863 (7th Cir. 1999); *United States ex rel. Jones v. Horizon Healthcare Corp.*, 160 F.3d 326, 335 (6th Cir. 1998); *United States ex rel. Ramseyer v. Century Healthcare Corp.*, 90 F.3d 1514, 1521 (10th Cir. 1996); *United States ex rel. Devlin v. California*, 84 F.3d 358, 360, 363 (9th Cir. 1996); *United States ex rel. Siller v. Becton Dickinson & Co.*, 21 F.3d 1339, 1348 (4th Cir. 1994); *United States ex rel. Springfield Terminal Railway Co. v. Quinn*, 14 F.3d 645, 649-51 (D.C. Cir. 1994); *United States ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Prudential Insurance Co.*, 944 F.2d 1149, 1152-54 (3d Cir. 1991).

[17] *But, see, United States ex rel. Hays v. Hoffman*, 325 F. 3d 982 (8th Cir. 2003)(finding both relator and the United States barred from pursuing claims if there was a public disclosure).

[18] 31 U.S.C. § 3730(e)(4)(A)

upon which the allegations are based and has voluntarily provided the information to the Government" prior to filing a *qui tam* action.[19] The *qui tam* provisions also contain a "first to file" rule prohibiting subsequently-filed actions that allege the same legal violations. 31 U.S. C. § 3730(b)(5); *see United States ex rel. Hampton v. Columbia/HCA Healthcare Corp.*, 318 F.3d 214 (D.C. Cir. 2003). Finally, a *qui tam* action cannot be based on allegations already the subject of a federal civil suit or a federal administrative civil money penalty proceeding in which the federal government is a party[20]; this provision seeks to prevent so-called "parasitical" actions that try to unfairly exploit pre-existing Government efforts to pursue false claims.

The legislative history shows that Congress was originally contemplating creating a new section for the retaliation claims, but instead opted to include them within 31 U.S.C. § 3730. Relocating the retaliation claims to the section dealing with the handling of other false claims reinforces the conclusion that Congress intended that the retaliation claims would have the same statutes of limitations as all other False Claims Act claims.

These jurisdictional, "first-to-file," and related provisions encourage a well-informed whistleblower, particularly one represented by experienced counsel, to offer information to the Department of Justice about the False Claims Act violations even before a *qui tam* action is filed and, often, before any employment retaliation occurs. The *qui tam* provisions and the public disclosure bar act also as a disincentive for employee whistleblowers to impair the Government's investigatory abilities, as can happen when the first disclosures of fraud occur in the public press, rather

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[19] 31 U.S.C. § 3730(e)(4)(B); *See United States ex rel. Barth v. Ridgedale Electric, Inc.*, 44 F.3d 699, 703 (8th Cir. 1995).

[20] 31 U.S.C. § 3730(e)(3).

than directly to appropriate Government investigators and prosecutors. A whistleblowing employee who informs federal investigators promptly may avoid employment retaliation for years, as the Government pursues witnesses and information without the glare of publicity and the *qui tam* case, if one is filed, remains sealed. Given the very substantial risks that *qui tam* litigation will not be successful, the employment protections are critical to the success of the statutory scheme.

C. Adoption of State Limitations Periods is Contrary to Supreme Court Precedent.

No law provides that a statute of limitations, once specified by Congress, should be set aside in favor of state limitations. Cases that discuss adopting state statutes of limitations refer to a "void," an absence of federal direction. *See, e.g., Bd. of Regents v. Tomanio*, 446 U.S. 478, 483 (1986) ("Congress did not establish a statute of limitations or a body of tolling rules applicable to actions brought in federal court under § 1983 – a void which is commonplace in federal statutory law.")

The position advocated by Petitioner, that this Court ignore the statute of limitations contained in 31 U.S.C. § 3731(b) and instead apply state statutes of limitations, is contrary to the trend advocated by this Court, the Congress, and practitioners. In the last session, this Court examined the litigation chaos that can ensue when the federal courts attempt to apply state statutes of limitation to federal employment and tort claims, as occurred in the 1980's with 42 U.S.C. § 1981:

> Prior to the enactment of § 1658, the "settled practice was to adopt a local time limitation as federal law if it [was] not inconsistent with federal law or policy to do so." *Wilson v. Garcia*, 471 US 261,

266-267(1985). Such "[l]imitation borrowing," *Board of Regents v. Tomanio*, 446 US, at 484, generated a host of issues that required resolution on a statute-by-statute basis. For example, it often was difficult to determine which of the forum State's statutes of limitations was the most appropriate to apply to the federal claim. We wrestled with that issue in *Wilson v. Garcia*, in which we considered which state statute provided the most appropriate limitation principle for claims arising under 42 U.S.C. § 1983 [42 USCS § 1983]. 471 US, at 268, 276-279 (resolving split of authority over whether the closest state analogue to an action brought under § 1983 was an action for tortious injury to the rights of another, an action on an unwritten contract, or an action for a liability on a statute). Before reaching that question, however, we first had to determine whether the characterization of a § 1983 claim for statute of limitations purposes was an issue of state or federal law and whether all such claims should be characterized in the same way. *Ibid.* Two years later, in *Goodman v. Lukens Steel Co.*, we answered the same three questions for claims arising under § 1981. 482 US, at 660, 661-662. Both decisions provoked dissent and further litigation.

Jones, 541 U.S. at 370 (2004). Under *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 660 (1987), federal courts were to determine and apply "the most appropriate or analogous state statute of limitations" for Section 1981 claims. Indeed, in sharp contrast to the situation that is before the Court in *Qui Tam* Relator Wilson's case, in enacting Title 42, Congress explicitly instructed the courts to look to state law as to any aspects of law that were not provided by Congress. *Robertson v. Wegmann*, 436 U.S. 584, 585 (1978). However, following the *Goodman* decision, Congress enacted a catchall

four-year statute of limitations for actions arising under federal statutes enacted after December 1, 1990. 28 U.S.C. § 1658. This catchall provision now applies to claims that "arise under" the 1991 amendments to the Civil Rights Act of 1866. *Jones, supra.*

D. Adoption of State Limitations Periods Will Create Inconsistent Time Periods and Introduce Needless Uncertainty Into an Area Where Congress Wanted and Supplied a Definite Time Period Within Which to Bring Claims.

The False Claims Act statute of limitations set forth in 31 U.S.C. § 3731(b)(2) is six years, but it has a tolling provision that prevents the statute from running until the Government knew or should have known of the facts, up to a maximum of ten years from the date of the violation. This applies to both the Government and a *qui tam* relator. Moreover, many Government contracts last for many years and are not finally "closed out" until months or years after most of the work was completed. This could extend, for many years, the time period when a case can be brought, retaliation can occur, and a meritorious retaliation claim can be asserted.

The statute of limitations in the federal False Claims Act is part of a legislative scheme that allows claims arising under government contracts to be brought within six years of the damage to the Government. Before the 1986 amendments to the False Claims Act, a six-year statute of limitations also applied. A parallel provision is contained in the provisions of 28 U.S.C. § 2415.

In contrast to the single limitations period in the False Claims Act, many states have more than one statute of limitations that applies to violations akin to the employee

retaliation protections of the False Claims Act and a few have state False Claims Acts with employee whistleblower protections.[21] However, unlike the statutes at issue in *Goodman*, there is no Congressional directive to apply state law at all. First, a number of states have both state common law actions analogous to Section 3730(h), such as wrongful discharge, breach of duty of good faith, or public policy exceptions to the employment-at-will doctrine, as well as statutory whistleblower and related retaliation protections.[22] Many are subject to general state statutes of limitations for torts, typically ranging from one to six years.[23] Second, a

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[21] *See, e.g.*, Cal. Gov't Code § 12653(b) (retaliation provision modeled after the federal False Claims Act retaliation provision). *See also* Del. Code. Ann. §§ 1201 *et seq.*; D.C. Code Ann. 2-308-14; Fla. Stat Ann. § 68.083(1); Hi. Rev. Stat. Ann. §§ 661-21 *et seq.*; 740 Ill. Comp. Stat. Ann. §§ 175/4(b); Mass. Gen. Laws Ann. ch. 12, § 5C(2); Nev. Rev. Stat. § 357.070-080; Tenn. Code Ann. §§ 4-18-101 *et seq.*; Va. Code Ann. §§ 8.01-216.5; Ar. Code Ann. § 20-77-902; Tex. Hum. Res. Code Ann. §§ 36.101 *et seq.*; Mich Comp. Laws §§ 15.361; Idaho St. §§ 6-2101 *et seq.*; Ohio Rev. Code Ann. §§ 4113.52 *et seq.*

[22] *See generally* Charles J. Muhl, The Employment-At-Will Doctrine: Three Major Exceptions, Monthly Lab. Rev., Jan. 2001,at 3, available at *http://www.bls.gov/opub/mlr/2001/01/art1full.pdf* (providing a chart, current to October 1, 2000, showing 43 states recognizing public policy exceptions to the employment-at-will doctrine; 11 allowing breach of the duty of good faith actions in the employment context; and 38 having implied contract exceptions to the employment-at-will doctrine. Only Florida, Georgia, and Rhode Island were reported as without such statutes.).

[23] *Sabine Pilot Service, Inc.*, 687 S.W.2d 733; 1985 Tex. LEXIS 755; 28 Tex. Sup. J. 339 (1985).

Harris v. Miss. Valley State University, 873 So. 2d 970, 985 (Mississippi 2004); *Buchanan v. Ameristar Casino Vicksburg, Inc.*, 852 So. 2d 25, 26-27 (Miss. 2003); *McArn v. Allied Terminix*

(continued...)

number of state legislatures have enacted specific whistleblower employment and employment-related retaliation laws, frequently a number of statutes in a single state,[24] protecting a wide variety of public interest whistleblowing activities.[25] These statutes of limitations also vary, with

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[23] (...continued)
Co., 626 So. 2d 603, 606-07 (Miss. 1993).

[24] The Texas Supreme Court noted that ". . ..the Legislature has been active in crafting whistleblower statutes that often vary from one another in material respects. . .." *City of Midland v. O'Bryant*, 18 S.W.3d 209, 216, 43 Tex. Sup. J. 884 (2000). Mississippi has a whistleblowing statute protecting public employees in blowing the whistle to state government officials, but requires exhaustion of internal remedies prior to bringing suit. Miss. Code Ann. § 25-9-173 (2004). No statute of limitations exists within the statute and the time limits and exhaustion requirements appear to depend upon those applicable to the general time limits for Mississippi public employees' grievances or suits. *See, e.g., East Mississippi State Hospital v. Callens, rehearing denied*, 2004 Miss. LEXIS 361 (2004), 2005 Miss. LEXIS 119 (February 17, 2005) (Mississippi Supreme Court).

[25] California, for example, has a very broad whistleblower retaliation statutory scheme, that extends protections to, *inter alia*, any employee who disclosed information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information disclosed a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation; refused to participate in an activity that would result in a violation of state *or* federal statute, or a violation or noncompliance with a state or federal rule or regulation. Cal Lab Code § 1102.5.

Like many state employment codes, the time limits for bringing an action under the California whistleblower statute are not contained within the statute itself, but are found elsewhere. *See, e.g.*, Cal Lab Code § 1102 *et seq.* (2005); *See* Cal. Lab. Code §2699

(continued...)

some having limits as short as 180 days.[26]

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[25] (...continued)
et seq. (2005).

New York provides for retaliation protections for private employees and also provides that such actions are to be brought within one year of the alleged retaliatory action, except that health care employees have two years within which to bring suit. NY CLS Labor §§ 740.2, 740.4 (2004).

[26] Florida's employee whistleblower statutory scheme imposes a 2 year statute that may be tolled for up to 4 years. Fla. Stat. § 448.103(1)(a)(2) (2004).

Minnesota's whistleblower protection laws have no statute of limitations and is presumably subject to the catch-all 6-year period in Minn. Stat. § 541.05 (2004) for statutory causes of action. On the other hand, it could be argued that in a *qui tam* action the appropriate statute is the two-year statute for torts, as that is the statute employed in 42 U.S.C. 1983 actions in Minnesota. Minn. Stat. § 541.07 (2004).

Montana's Wrongful Discharge from Employment Act has a one year statute of limitations, but that time limit may be extended for up to 120 days if the employer has a written appeal process. MCA § 39-2-911 (2004).

New Jersey's Conscientious Employee Protection Act has a one year statute of limitations. NJ Stat. § 34:19-5 (2004).

Ohio Rev. Code 4113.51 et seq. ("Ohio Whistleblower Act") provides a 180-day statute of limitations for employment retaliation claims arising thereunder. However, Ohio wrongful discharge public policy common law claims, known as "Greeley" tort claims, are subject to a six-year statute of limitations applicable to miscellaneous actions for which there was no specific statutory action.

(continued...)

Third, there are many state and federal employment retaliation statutes encompassing activities related to investigation of, asserting, or testifying in a matter involving employment discrimination, whistleblowing, public policy claims, speech on matters of public interest. These statues vary widely containing individualized coverage schemes thereby creating the possibility that False Claims Act *qui tam* relators who work together, even in the same state or in different states, could be subject to very different time periods for bringing an action, depending upon the peculiarities of state law.[27]

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[26] (...continued)
The Rhode Island Whistleblowers Protection Act has a 3 year statute of limitations. R.I. Gen. Laws § 28-50-4 (2004).

The Texas "Protection for Reporting Violations of Law" applicable to public employees has an initial 90 day statute of limitations, with a tolling of the statute where the violation was not reasonably known to the employee or while required internal administrative proceedings are ongoing. Tex. Gov't Code § 554.005 (2004); Tex. Gov't Code § 554.006. Where internal remedies have not succeeded, there are only 30 days to proceed to bring a lawsuit. Tex. Gov't Code § 554.006.

[27] Montana's Wrongful Discharge from Employment Act only applies to discharges and constructive discharges, not to other retaliatory actions. MCA § 39-2-903 (2004). Montana's statute does not apply to probationary employees and, in some situations, to those hired within 6 months of the termination. MCA § 39-2-904 (2004). Texas's statutory scheme protects from retaliation any employees who have hired a lawyer to represent them in a claim, although its application to *qui tam* plaintiffs is uncertain. Tex. Lab. Code § 451.001 (2004). Texas's "Protection for Reporting Violations of Law" also protects certain public employees from retaliatory actions for certain kinds of whistleblowing to governmental authorities. Tex. Gov't Code § 554.002 (2004).

The Congressional intent of increasing the security of employees who report misconduct is ill-served by a scheme which affords a statutes of limitations as short as 180 days, such as under Texas and Ohio law. This would undermine the False Claims Act's purposes. As stated by the Court in *Occidental Life Ins. Co. v. Equal Employment Opportunity Commission*, 432 U.S. 355, 367, 368-369 (1977):

> But the Court has not mechanically applied a state statute of limitations simply because a limitations period is absent from the federal statute. State legislatures do not devise their limitations periods with national interests in mind, and it is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies. "Although state law is our primary guide in this area, it is not, to be sure, our exclusive guide." *Johnson v. Railway Express Agency*, 421 U.S. 454, 465. State limitations periods will not be borrowed if their application would be inconsistent with the underlying policies of the federal statute. *Ibid.; Auto Workers v. Hoosier Cardinal Corp., supra*, at 701; *Board of County Comm'rs v. United States*, 308 U.S. 343, 352.

Accord, Holmberg v. Armbrecht, 327 U.S. 392 (1946) (equity and laches can still operate to bar claim brought timely under statute of limitations if unfair to defendant).

Moreover, under existing authority, litigants who are now relying upon the six-year statute in the False Claims Act face loss of the retaliation protections retroactively,[28]

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[28] *See, e.g., Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749 (1995) and the concurring opinions therein, discussing some of the complex issues that can arise when this Court enunciates a new rule involving statutes of limitations, selection of appropri-

(continued...)

creating years of uncertainty while district and appellate courts wrestle with most analogous state law issues, only to have those rulings change due to the rapidly developing and ever-changing state statutory schemes for public policy and whistleblower protections and the eventual development of established Supreme Court precedent.[29]

Furthermore, it is common practice in False Claims Act litigation to include 31 U.S.C. § 3730(h) claims in False Claims Act complaints filed under seal. Indeed, it would be essentially malpractice to file a 31 U.S.C. § 3730(h) claim before a claim under 31 U.S.C. § 3730(b) was filed, risking a ruling that the public disclosure jurisdictional bar required dismissal of the *qui tam* portion of the complaint, as specified in 31 U.S.C. § 3730(e)(4). Petitioner's reading of the statute would force the relator to choose between prematurely filing both actions or completely foregoing her retaliation claim. Congress did not intend to achieve such a confounding result. As the legislative history behind the 1986 Amendments reveals, the False Claims Act's extended statute of limitations provision is needed to "ensure the Government's rights are not lost through a wrongdoer's successful deception," because "fraud is, by nature, deceptive

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[28] (...continued)
ate state statutes, tolling issues under state law, and retroactivity issues with newly-announced statutes of limitations.

[29] "On the same day we decided *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 115 L. Ed. 2d 481, 111 S. Ct. 2439 (1991), in which a majority of the Court held, albeit in different opinions, that a new rule of federal law that is applied to the parties in the case announcing the rule must be applied as well to all cases pending on direct review." *Plaut v. Spendthrift Farm*, 514 U.S. 211, 214 (1995) (citing *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86, 92, 125 L. Ed. 2d 74, 113 S. Ct. 2510 (1993)).

. . ." S. Rep. No. 99-345, at 15 (1986). Perhaps this is why Congress expressly extended the six-year statute of limitations provision to all three causes of action provided by 31 U.S.C. § 3730.

CONCLUSION

The Fourth Circuit's decision applying the six-year limitations period to claims arising under 31 U.S.C. § 3730(h) should be affirmed. "Few areas of the law stand in greater need of firmly defined, easily applied rules than does the subject of periods of limitations." *Wilson v. Garcia,* 471 U.S. 261, 266 (quoting *Chardon v. Fumero Soto,* 462 U.S. 650, 667 (1983)).

Petitioner's argument that state law should supply the limitations period for federal whistleblower protections is not based on common sense nor sound legal principles. "State legislatures do not devise their limitations periods with national interests in mind," but "it is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies." *Occidental Life Ins. Co. of California v. EEOC,* 432 U.S. 355, 367 (1977).

Accordingly, NELA and TAFEF respectfully request that the Court affirm the Fourth Circuit's ruling that the applicable limitations period for False Claims Act employment retaliation claims under 31 U.S.C. 3730(h) is the six-year period found in the False Claims Act.

Respectfully submitted,

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